

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Cr. No. 19-cr-4447-KWR

MAROQUEZ CLAH,

Defendant.

DEFENDANT'S THIRD UNOPPOSED MOTION TO CONTINUE

Defendant Marquez Clah, by and through his counsel of record Assistant Federal Public Defender Emily P. Carey, moves the Court to continue the jury trial currently scheduled on the September 14, 2020 trailing docket, and to vacate and reschedule all other deadlines and settings in this matter for thirty (30) days. In support of this Motion, Mr. Clah states:

1. On February 20, 2020, Mr. Clah pleaded not guilty to an indictment charging him with one count of involuntary manslaughter in violation of 18 U.S.C. §§ 1153 and 1112.
2. Trial in this matter is scheduled for September 14, 2020. The Call of the Calendar is scheduled on September 10, 2020.
3. Defense counsel has a recognized duty to conduct a reasonable investigation. *See Strickland v. Washington*, 466 U.S. 668, 691, 104 S. Ct. 2052 (1984). Such investigation must be completed before undersigned counsel can adequately advise Mr. Clah of his legal options.
4. Consistent client communication and investigation into this matter has been challenging in light of COVID-19 related restrictions. On March 13, 2020, this Court issued an Administrative Order related to Court Operations in Light of the Coronavirus Outbreak. (*See*

Administrative Order, 20-mc-00004-9). In that Order, the Court recognized growing national and state concern pertaining to the global pandemic, and announced measures to restrict in-person activity at the Court in an effort to combat the spread of the coronavirus. The Office of the Federal Public Defender also altered its practices and policies to protect the health of its employees, clients, and the community. On March 13, 2020, the number of presumptive positive COVID-19 cases in New Mexico was 10.¹ As of August 16, 2020, that number has risen to 23,408 cases with 714 deaths.² The Navajo Nation has been hit particularly hard by the Coronavirus and has imposed strict measures to protect its members including curfews, weekend lockdowns, and limiting travel into and outside of Navajo Nation.³ This has caused unavoidable delay in the defense investigation and ability to meet with and review discovery with Mr. Clah.

5. As the Court is aware, Mr. Clah required emergency surgery at the end of April to treat a serious infection that developed in his leg after placement of hardware months prior. Mr. Clah underwent a second surgery the first week of July to assess the infection and replace hardware. In the immediate aftermath of each surgery, Mr. Clah was not in a position to consult with his legal team, resulting in additional delay.

6. The parties have begun active plea negotiations and an additional thirty (30) days will give the parties time to discuss the possibility of a negotiated resolution. Mr. Clah believes it may be in his best interest to explore whether this matter can be resolved short of trial. However, Defense counsel requires additional time to review case materials with Mr. Clah and to discuss with him any offers extended by the United States.

¹ See Allison Keys, *State addresses new coronavirus cases, public school closures, unemployment in press conference*, KRQE (Mar. 13, 2020), available at: <https://www.krqe.com/health/coronavirus-new-mexico/watch-live-gov-holds-press-conference-following-closure-of-public-schools-amid-coronavirus/> (last viewed on Aug. 17, 2020).

² See New Mexico Department of Health, 2019 Novel Coronavirus Disease Updates, available at: <https://cv.nmhealth.org/> (last viewed on August 17, 2020).

³ See Navajo Department of Health, COVID-19 Updates, available at: <https://www.ndoh.navajo-nsn.gov/COVID-19> (last viewed on August 17, 2020).

7. Alternatively, Defense counsel requires additional time to prepare should this matter proceed to trial. Mr. Clah's right to the effective assistance of counsel includes adequate time to prepare for trial, and effectively complete a defense investigation. Without this time to prepare, Mr. Clah will be denied his right to the effective assistance of counsel. Mr. Clah respectfully requests a continuance of thirty (30) days in order to prepare for trial. Mr. Clah cannot be and will not be ready for trial in advance of thirty (30) days from the current setting.

8. The continuance of thirty (30) days will not prejudice Mr. Clah, as it will allow counsel an opportunity to prepare an effective defense and to attempt to negotiate a favorable plea bargain. Counsel has informed Mr. Clah of his rights under the Speedy Trial Act, 18 U.S.C. § 3161, and he understands the need for a continuance and respectfully requests that the Court continue trial for thirty (30) days from the current setting.

9. In accordance with 18 U.S.C. § 3161(h)(7)(A), undersigned counsel affirmatively states that granting this extension of time in which to file motions and a continuance of the trial will serve the ends of justice. *See United States v. Toombs*, 574 F.3d 1262, 1273 (10th Cir. 2009) (“The Speedy Trial Act was intended not only to protect the interests of defendants, but was also ‘designed with the public interest firmly in mind.’”) (quoting *Zedner v. U.S.*, 547 U.S. 489, 504 (2006)). Additional time in this matter will serve the ends of justice by allowing the defense to conduct a thorough review of all discovery, adequately investigate the case, and prepare and file any necessary pretrial motions and communicate with Mr. Clah. Additionally, a continuance will provide the parties time to discuss a possible negotiated resolution, which could materially benefit both parties and the Court.

11. This motion is not predicated upon the congestion of the Court’s docket.

12. Counsel for the United States, Assistant United States Attorney Novaline Wilson, does not oppose a continuance.

WHEREFORE, Mr. Clah respectfully requests that this Court continue the jury trial and motions deadline as set forth above.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER
111 Lomas NW, Suite 501
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Electronically filed August 17, 2020

/s/ Emily P. Carey

Assistant Federal Public Defender
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following: Novaline Wilson, Assistant United States Attorney.

Electronically filed August 17, 2020

/s/ Emily P. Carey

Assistant Federal Public Defender